

## ***Montana Long-Term Care Residents' Bill of Rights***

**50-5-1101. Short title.** This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

**50-5-1102. Findings and purpose.** (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

- (a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and
- (b) provide for the education of residents and staff regarding these rights.

**50-5-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

- (a) a person who has a general power of attorney for a resident;
- (b) a person appointed by a court to manage the personal or financial affairs of a resident;
- (c) a representative payee;
- (d) a resident's next of kin; or
- (e) a sponsoring agency.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Facility" or "long-term care facility" means a facility or part of a facility licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

**50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

- (a) A resident or the resident's authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in another part of the facility where the resident must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

**50-5-1105. Long-term care facility to adopt and post residents' rights.** (1)

The administrator of each long-term care facility shall:

- (a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;
  - (b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;
  - (c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and
  - (d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.
- (2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.
- (3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

**50-5-1106. Resident's rights devolve to authorized representative.** The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

- (1) exhibits a communication barrier;
- (2) has been found by his physician to be medically incapable of understanding these rights; or
- (3) has been adjudicated incompetent by a district court.

**50-5-1107. Enforcement of residents' rights.** The requirements of 50-5-1104 through 50-5-1106 are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.